IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 341 of 1992

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA **Sd/-**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ? **1 & 2 YES; 3 to 5 NO**

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HARDIN I WAGHELA - Appellant(s)
Versus
RALIYABHAI VIKRAMBHAI BHIL & 2 - Defendant(s)

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Appearance :
MS JOLLY R PARIKH for Appellant(s) : 1,
NOTICE SERVED for Defendant(s) : 1 - 2.
MR VC THOMAS with MR PV NANAVATI for Defendant(s) : 3,
MR VIBHUTI NANAVATI for Defendant(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 18/12/2007

ORAL JUDGMENT :

1. The appellant has, under the erstwhile provisions of section 110-D of the Motor Vehicles Act, 1938, sought to challenge the award dated 17.1.1991 of Motor Accident Claims Tribunal (Aux.), Vadodara in Motor Accident Claims

Petition No.612 of 1986 whereunder he was awarded Rs.92,200/- with interest @ 12% p.a. with proportionate cost. Pressing the appeal for enhancement of the amount of compensation, learned counsel Ms.Jolly Parikh vehemently argued that original claim of Rs.1,40,000/- was required to have been fully allowed in view of permanent partial disability of 25% suffered by the appellant due to the injuries caused by accident entirely attributable to negligence of the respondent. She submitted that the multiplicand and the multiplier were required to be revised for the purpose of awarding additional compensation, and the amount of compensation for loss of amenities of life was also required to be properly assessed. She relied upon judgment of the Supreme Court in ***R.D.Hattangadi v. Pest Control (India) Pvt. Ltd. [(1995) 1 SCC 551]*** to submit that non-pecuniary loss due to crippling disability was also required to be considered under the heads of "pain and suffering and loss of amenity of life". She also relied upon judgment of the Supreme Court in ***Divisional Controller, KSRTC v. Mahadeva Shetty [(2003) 7 SCC 197]*** to submit that an injury may bring about many consequences like loss of earning capacity, loss of mental pleasure and many such consequential losses. A person becomes entitled to damages for mental and physical loss, his or

her life may have been shortened or that he or she cannot enjoy life, which has been curtailed because of physical handicap. The normal expectation of life is impaired. Broadly speaking, compensation should not be inadequate and should neither be unreasonable, excessive nor deficient.

2. According to the impugned award and the evidence on record, the appellant, aged 40 at the time of accident which occurred on 31.7.1985, was going on his bicycle on the left side of the road when the opponent driving his car rashly and negligently dashed from behind the bicycle due to which the appellant sustained injuries. The doctor examined at Exh.63 deposed that the appellant was found to have pubic symphysis disruption, was transferred to orthopaedic ward on 2.8.1985, operated on 3.8.1985 and discharged on 7.8.1985 with advice of bed rest for three weeks and further follow-up of OPD. On 11.9.1985 he was advised to continue rest and was considered fit for light duty from 1.12.1985. On 1.2.1986 he was found to have sceptic nacrosis of pubic centre due to which he had to frequently visit OPD for complaint of pain. When he was examined for permanent partial disability on 6.5.1987, it was assessed at 25%, excluding the

mental trauma due to inability to perform sexual act. The Tribunal appreciated that the disability resulting from the accident was going to affect the working and all biological functions of body making him unable to work with full enthusiasm and stability. The appellant was getting Rs.1,124/- per month at the time of accident and Rs.1,865/- at the time of deposition. Therefore, taking Rs.1,600/- as the probable future income per month and monthly loss to be Rs.400/- on the basis of 25% disability and adopting the multiplier of 15, Rs.72,000/- was assessed as the loss of future income. Adding the compensation on other heads, viz. Rs.7,000/- for loss of enjoyment of life, Rs.5,000/- for mental shock, pain and agony, Rs.4,500/- for loss of salary, Rs.2,500/- for medical treatment, Rs.1,000/- for special diet and conveyance charges and Rs.200/- towards damage to cycle, total sum of Rs.92,200/- was awarded by the Tribunal.

3. Learned counsel Mr.Thomas, appearing with learned advocate Mr.P.V.Nanavati for respondent No.3, supported the impugned award and submitted that the award of compensation was already on the higher side and, under the circumstances, no enhancement of the amount of compensation would be justified.

4. It was, however, seen that even as the appellant was examined in the Court in the year 1990 within five years of the accident, his monthly salary had actually increased from Rs.1,124/- to Rs.1,865/-. Therefore, assessment of his probable income in future at Rs.1,600/- per month was illogical and unjustified. Even taking future income of the appellant at Rs.2,000/- per month, having regard to his age, loss of income per month due to 25% disability would be Rs.500/- which, multiplied by 180, would come to Rs.90,000/- requiring increase of Rs.18,000/- towards future loss of income. In view of his hesitant and vague assertion about physical disability, particularly in respect of loss of amenities of life, an increase on that ground may not be justified.

5. In the facts and for the reasons briefly discussed hereinabove, appeal is partly allowed with the direction that the appellant shall be paid by the respondent additional amount of Rs.18,000/- with interest @ 7.5% per annum from the date of claim application till realization. There is no order as to costs.

Sd/-

(D.H.Waghela, J.)

(KMG Thilake)